

MISC. CRIMINAL APPLICATIONS NO.397 OF 1996 & 445/96.

Date of decision: 1 -5-1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. H.J. Shah, advocate for petitioners in both petitions.

Chandulal Jethalal Jaiswal, party in person, respondent No.1 in both petitions.

Mr. S.R. Divetia, A.P.P., for respondent No.2-State in both petitions.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

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May 1, 1996.

Common CAV Judgment:

1. Since both these matters are between same parties involving identical question of law and facts, are disposed of by this common judgment.
2. Respondent No.1 filed criminal complaint No. 1949 of 1994 for the offences under Sections 193, 228 and

420 of the Indian Penal Code against the present petitioners in the Court of learned Judicial Magistrate, First Class, Baroda. The Court vide order dated 10.10.1994 took cognizance and issued process. Aggrieved by this order of taking cognizance and issuance of process the petitioners have approached this Court under Section 482 of the Criminal Procedure Code ("the Code" for short hereinafter) for quashing the criminal proceedings and process. Petitioner in Misc. Criminal Application No. 397 of 1996 is Sandesh Limited, a juristic person, publishing "Sandesh", a vernacular daily newspaper from different places in Gujarat whereas petitioner in Misc. Criminal Application No.445 of 1996 is the publisher of the aforesaid vernacular newspaper. Both the petitioners are impleaded as accused in Criminal Complaint No.1949 of 1994 filed as above. In order to appreciate real controversy between the parties, it would be worthwhile to peep in backdrop of facts which have given rise to these applications.

3. It is alleged that three news items were published by petitioners against respondent No.1 in Baroda Edition of Gujarati daily "Sandesh". The news items were published on 16.3.1989, 8.6.1989 and 25.5.1990. According to respondent No.1/original complainant, the news items were totally false, baseless, malafide and defamatory as a result of which immense loss and injury has been caused to his own reputation as well as his family members. Aggrieved by said publication, respondent No.1 complained to the Press Council under Section 14 of the Press Council Act, 1978 ("the Act" for short hereinafter). The Press Council adjudicated the matter upholding the allegations made by the complainant and recommended for "censure" and issuing warning to daily newspaper "Sandesh" for committing serious breach of journalistic ethics. From the record it also transpires that during the course of proceedings before the Press Council, as the petitioners once sought adjournment were also directed to pay Rs.1,000/as costs to respondent No.1. The order of adjudication has been produced as Annexure E to the petitions. Armed with the order of Press Council upholding the allegations of respondent No.1 and recommending order of "Censure" and warning to the petitioners, the impugned complaint under Section 193, 228 and 420 of IPC is filed contending that the news items itself are fabrication of false evidence with further relief of claiming damages to the tune of Rs.2,00,00,000/-.

4. It is true that except in extraordinary circumstances Court should not exercise its inherent

powers under Section 482 of the Code so as to quash the prosecution proceedings after they have been launched. Similarly, malafide or animus complaint or prosecution is also not relevant factors for quashing. Normally, quashing of proceedings would be in the nature of embarking upon the powers of subordinate courts as regards inquiry as to reliability or genuineness of allegations made therein. Therefore, the powers have to be exercised with great care and caution and should not be exercised in mechanical manner. But at the same time allegations in the complaint even if taken at their face value and accepted in their entirety do not constitute offence alleged, then prima facie no offence shall be deemed to have been committed and allowing such complaints to be prosecuted would be abused of process of law and shall be a fit case calling for interference under Section 482 of the Code because under such circumstances, one can clearly infer that the complaint is filed with vendetta to harass so-called accused.

5. It is argued on behalf of the petitioners that even taking the allegations as they are, the facts do not constitute any offence as alleged under Sections 193, 228 or 420 of IPC. What is averred in the impugned complaint is that on 16.3.1989, 8.6.1989 and on 25.5.1990, the "Sandesh" published some false news items without any basis. The news items are defamatory and has spoiled the image and reputation of respondent No.1 and, therefore, he had filed application under Section 14 of the Act to the Press Council which has upheld the allegations and after adjudication "Censured" and warned the petitioners and thus, shall be deemed to have committed offences under sections 193, 228 and 420 of IPC and, hence they should be punished and shall be directed to pay damages to the tune of Rs.2,00,00,000/- for publication of defamatory news items.

6. In order to appreciate these allegations, sections 193 and 228 of the IPC are reproduced as under:

"193. Punishment for false evidence.--Whoever intentionally gives false evidence in any stage of a judicial proceedings, or fabricates false evidence for the purpose of being used in any stage of judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

"228. Intentional insult or interruption to public servant sitting in judicial proceeding.-- Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

According to Section 193 of IPC, whoever intentionally gives false evidence in any stage of judicial proceedings or fabricates false evidence for the purpose of being used at any stage of judicial proceedings shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. According to Section 228 of IPC, whoever intentionally offers any insult or causes any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. With this bare allegations in the complaint, I do not find an iota of evidence showing that petitioners have intentionally given false or fabricated false evidence at any stage of judicial proceedings. Similarly, it is also not clear from the allegations about the intentional act of petitioners amounting to insult or interruption in discharge of a Government servant while sitting in a judicial proceeding. Mere adjudication under Section 14 of the Act does not and cannot amount to commission of offence as alleged. The offence can be committed only in judicial proceedings whereas there are no allegations of fabrication of false documents/evidence in judicial proceedings. Thus, on the face of it, in my view, the allegations made in the complaint do not constitute any offence of whatever nature much less as alleged in the complaint. Process has also been issued under Section 420 of the IPC. It appears that the court has acted in perfunctory manner while issuing process. I do not find any allegation in the complaint so as to satisfy the ingredients of Section 420 of IPC which deals with cheating and dishonestly inducing delivery of property.

7. Mr. Jaiswal, respondent No.1, appearing party in person, has invited my attention to the order passed after adjudication by the Press Council upholding the allegations and issuing censure and warning to the petitioners for committing breach of journalistic ethics.

He has invited my attention to Section 14 (4) of the Act which gives finality and grants immunity from being challenged in any court. Thus, an attempt is made that the news items published are false, without any basis, defamatory in nature and, therefore, the petitioners shall be deemed to have fabricated false evidence. In my view, the concept of fabrication of false evidence has been stretched too much and cannot be accepted. In any judicial proceedings adjudication of the matter in acceptance of allegations of one party and rejection of others by itself cannot be fabrication of false evidence.

8. Taking recourse to section 15 (3) of the Act it is argued that inquiry held by the Press Council is a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. It is true that proceedings before the Press Council are deemed to be judicial proceedings and if any person fabricates or gives false evidence in any proceeding before the Press Council can be held guilty for offence under Section 193 of IPC. Similarly, if during the course of proceedings any person deliberately acts in a way amounting to insult or interruption in discharge of duties by a public servant in such judicial proceeding then can be punished under Section 228 of IPC. But neither the adjudication order nor any documentary evidence suggest of giving false or fabricated evidence during the proceedings or acting in any manner tantamounting to insult or interruption of proceedings conducted by Press Council. Section 15 (3) empowers the Press Council itself with the powers vested in regular courts and can be invoked independent of approaching regular court established under the Code. There is no whisper of any observation in the order of adjudication about commission of alleged offence during the course of proceedings and, therefore, on the face of it no offence is committed.

9. It would be pertinent to note that the original publication is not the subject matter of the complaint but the order of adjudication upholding the allegations made by respondent No.1 before the Press Council is the subject matter. It is argued by respondent No.1 that the present complaint has been filed for the purpose of implementing the order of adjudication. Whether the law provides for mode of execution and implementation of order, is altogether a distinct question but even assuming that law provides then the procedure resorted by respondent No.1 and the forum chosen is not at all proper and in accordance with law.

10. Respondent No.1 has also taken me through the

averments made by petitioners in their affidavit-in-reply filed before the Press Council and argued that ex-facie the averments are false and thus amounts to fabrication of false evidence. Filing of affidavit in reply to the allegations made in the complaint is no more fabrication of false evidence. It is mere denial is ones best wisdom and it is for the forum to decide correctness and reliability thereof and, therefore, the averments made in the affidavit in reply by itself cannot constitute fabrication or giving of false evidence. For the sake of argument, even assuming that the averments made in the affidavit in reply amount to fabrication of false evidence as contended by respondent No.1 it is for the Press Council of India to take appropriate steps in light of provisions of Section 15 (3) of the Act. But, nonetheless empowers respondent No.1 to invoke criminal jurisdiction as done in this case.

11. Summing up of the observations made herein above, to some of the observations it is held that the allegations made in the complaint taken as true as it is in its face value do not constitute any kind of offence muchless offence alleged and, therefore, on the face of it the complaint is not maintainable as no offence as alleged is disclosed or made. The complaint filed is as vendetta to harass the petitioners.

12. In the result, the petitioners succeed. The proceedings and process issued in Criminal Complaint No.1949 of 1994 by the learned Judicial Magistrate, First Class, Baroda are quashed and set aside. Rule made absolute accordingly.